

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRANKIE JAMES GARNER,
Plaintiff

v.

CIVIL ACTION NO.:
04-12017-EFH

LOIS RUSSO,
Defendant.

ORDER OF DISMISSAL

December 10, 2004

HARRINGTON, S.D.J.

The Court grants Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus on the ground that the petitioner has failed to exhaust the claims stated in his petition for a writ of habeas corpus; specifically, the petitioner has not presented either the factual or legal bases to the Massachusetts Supreme Judicial Court of four of the six claims he now asserts in his petition.

Said unexhausted claims are as follows:

1. Trial court committed reversible error when it admitted evidence obtained as a result of an allegedly improper warrantless search;
2. Statement made at police station should have been suppressed;
3. Trial Court erred in refusing to admit an "excited utterance" from the witness stand; and
4. There was an unduly suggestive identification of a weapon related to his conviction on the joint venture theory.

This case is ordered dismissed. Rose v. Lundy, 455 U.S. 509, 510 (1982)

SO ORDERED.

/s/ Edward F. Harrington
EDWARD F. HARRINGTON
United States Senior District Judge